



**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 102-117**

**[FMR Case 2013-102-1; Docket 2013-0009, Sequence 1]**

**RIN: 3090-AJ35**

**Federal Management Regulation (FMR); Obligating  
Authority**

**AGENCY:** Office of Governmentwide Policy (OGP), General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. General Services Administration (GSA) is proposing to amend the Federal Management Regulation (FMR) to recommend that agencies, as defined in § 102-117.25, provide written authority to Transportation Officers who acquire transportation services utilizing a rate tender acquisition. This written authority would help agencies manage the billions of dollars that the Government spends annually on transportation. This proposed rule, if adopted, would describe procedures that agencies should follow to delegate authority to Transportation Officers and includes experience and training requirements that a Transportation Officer should meet before being authorized to acquire transportation services.

**DATES:** Interested parties should submit comments in writing on or before **[Insert date 60 days after publication in the**

**Federal Register]** to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments in response to FMR Case 2013-102-1 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FMR Case 2013-102-1" and selecting the link "Submit a Comment" that corresponds with "FMR Case 2013-102-1". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FMR Case 2013-102-1" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., ATTN: Hada Flowers, Washington, DC 20405-0001.

Instructions: Please submit comments only and cite FMR Case 2013-102-1, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lee Gregory, Office of Asset and Transportation Management (MA), Office of Governmentwide Policy (OGP), at 202-501-1533 or by e-mail at [lee.gregory@gsa.gov](mailto:lee.gregory@gsa.gov). Please cite FMR Case 2013-102-1. For

information pertaining to status or publication schedules contact the Regulatory Secretariat at 202-501-4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Agencies are authorized to procure transportation services either through the Federal Acquisition Regulation (FAR), by utilizing a contract, or via 49 U.S.C. § 10721 (for rail transportation), 49 U.S.C. § 13712 (for surface transportation), or 49 U.S.C. § 15504 (for pipeline transportation) utilizing rate tenders.

Rate tenders are an alternative method of acquiring transportation services that is neither mandatory nor exclusive. In order to determine which method is better suited for the acquisition of transportation services, an evaluation of the transportation services to be acquired must be made. The FMR discusses the criteria for choosing between rate tender and FAR acquisitions in FMR sections 102-117.30 through 102-117.55.

The FAR requires that a Contracting Officer (CO) receive clear instructions in writing regarding the contracting officer's authority (48 CFR § 1.603-3). Contracts may be entered into and signed on behalf of the Government only by a contracting officer. In contrast there is no analogous regulation for Federal Transportation Officers under which an

appointing official authorizes them to acquire transportation services. However, some agencies have delegations of authority or other agency procedures in place for their workforce.

A Transportation Officer that acquires transportation services through a rate tender acquisition should be qualified and trained in transportation management or have relevant transportation experience in order to manage a rate tender acquisition properly.

GSA published a proposed rule in the Federal Register on May 4, 2005 (70 FR 23078) to add the recommendation that transportation managers who obligate Government funds for rate tender procurements must be properly authorized in writing, which certifies that the transportation manager is competent and trained in transportation management and has the authority to commit Government funds for the procurement of transportation or transportation services. Comments were received from four agencies (U.S. Department of State, Internal Revenue Service, U.S. Department of Agriculture, and Federal Aviation Administration). Applicable comments were incorporated into this current proposed rule, such as expanding time to phase program implementation, identifying activities that would not require a warrant, and providing flexibility for the program and requirements to the agency. Due to the length of time since the publication of the 2005

proposed rule, and because GSA's position on this issue has evolved, GSA is publishing this new proposed rule.

Section 3(a)(1) of the Travel and Transportation Reform Act of 1998 (the Act), Pub. L. 105-264, amended 31 U.S.C. § 3322(c)(1), holding disbursing officials personally liable for overpayments other than an overpayment for the use of improper transportation rates or classifications if the Administrator of General Services has determined that verification by a prepayment audit will not adequately protect the interests of the Government. Similarly, section 3(a)(2) of the Act amended 31 U.S.C. § 3528(a)(5), requiring certifying officials to verify transportation rates and classifications and holding such officials personally liable for overpayments unless the overpayment occurred solely because a prepayment audit did not verify the rate or classification and the Administrator of General Services has determined that verification by a prepayment audit will not adequately protect the interests of the Government. These provisions were effective April 19, 2000. This proposed rule would add a reference to these statutory provisions in proposed FMR section 102-117.410.

#### **B. Major Revisions**

This proposed rule will:

- Define "Third Party Logistics", "Transportation Officer" and "Transportation Officer Warrant";

- Recommend that rate tender acquisitions of transportation services for an agency be performed only by a warranted Transportation Officer;
- List the suggested minimum elements of a Transportation Officer warrant;
- Outline the suggested minimum requirements for training and/or experience to be a warranted Transportation Officer;
- Recommend agency procedures for creating a warranted Transportation Officer program; and
- Refer to the liability created by Pub. L. 105-264, and refer the reader to FMR sections 102-118.350 through 102-118.370 for further information.

In accordance with Executive Order (EO) 13563, this proposed regulation is included in GSA's retrospective review of existing regulations at [www.gsa.gov/improvingregualtions](http://www.gsa.gov/improvingregualtions).

#### **C. Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, reducing costs, harmonizing rules, and promoting flexibility. This is not a significant regulatory action, and therefore, will not be subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **D. Regulatory Flexibility Act**

While these revisions are substantive, this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The proposed rule is also exempt from the Administrative Procedures Act per 5 U.S.C. 553 (a)(2) because it applies to agency management or personnel policies related to Transportation management.

#### **E. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offeror, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq.

#### **F. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management or personnel.

**List of Subjects in 41 CFR Part 102-117**

Transportation Management.

Dated: July 23, 2013.

Anne E. Rung,  
Acting Associate Administrator,  
Office of Governmentwide Policy



For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102-117 as follows:

**PART 102-117-TRANSPORTATION MANAGEMENT**

1. The authority citation for 41 CFR part 102-117 is revised to read as follows:

**Authority:** 31 U.S.C. 3726; 40 U.S.C. 121(c); and 40 U.S.C. 501, et seq.

2. Amend § 102-117.25 by alphabetically adding the definitions "Third Party Logistics (3PL)", "Transportation Officer (TO)" and "Transportation Officer Warrant" to read as follows:

**§ 102-117.25 What definitions apply to this part?**

\* \* \* \* \*

Third Party Logistics (3PL) is an entity that provides multiple logistics services for use by customers. Among the transportation services 3PLs generally provide are integration transportation, warehousing, cross-docking, inventory management, packaging, and freight forwarding.

\* \* \* \* \*

Transportation Officer (TO) is a person authorized, in accordance with this part, to select transportation service providers using rate tenders, including but not limited to selecting Third Party Logistics (3PL) or Transportation Service

Provider (TSP) and issuing a bill of lading. The TO may also serve as the subject matter expert for a Contracting Officer.

Transportation Officer Warrant is an agency-issued document that authorizes a Transportation Officer to procure transportation services using rate tenders, select Third Party Logistics (3PL) or Transportation Service Provider (TSP), issue bills of lading, and otherwise perform the duties of a Transportation Officer.

\* \* \* \* \*

3. Add Subpart M, consisting of §§ 102-117.365 through §§ 102-117.410 to read as follows:

**Subpart M—Recommendations for Authorization and Qualifications  
to Acquire Transportation Using a Rate Tender**

Sec.

- 102-117.365 What are the responsibilities of a Transportation Officer?
- 102-117.370 Should I have a Transportation Officer warrant to acquire transportation services using a rate tender?
- 102-117.375 Are there instances where a Transportation Officer warrant is not necessary to acquire transportation services?
- 102-117.380 What should be contained in a Transportation Officer warrant to acquire transportation services?
- 102-117.385 Is there a standard format for a Transportation Officer warrant?
- 102-117.390 What training and/or experience is recommended for my agency to warrant me to acquire transportation services?
- 102-117.395 Should I continue my training to maintain my warrant?

- 102-117.400 How should my warrant be documented and maintained?
- 102-117.405 Are there dollar limits on transportation service acquisitions?
- 102-117.410 Is a Transportation Officer liable for his/her actions?

**Subpart M—Recommendations for Authorization and Qualifications  
to Acquire Transportation Using a Rate Tender**

**§ 102-117.365 What are the responsibilities of a  
Transportation Officer?**

Transportation Officer's duties include:

- (a) Negotiating rates;
- (b) Signing bills of lading;
- (c) Certifying bills of lading;
- (d) Approving additional accessorial charges;
- (e) Selecting and procuring services of a TSP; and/or
- (f) Selecting and procuring services of a 3PL.

**§ 102-117.370 Should I have a Transportation Officer warrant  
to acquire transportation services using a rate tender?**

Yes, it is recommended that you have a written document, such as a warrant, issued by the head of your agency or his/her designee, which expressly allows you to acquire transportation services using approved non-FAR acquisition methods for specified transportation services and states dollar limit or range for the warrant authority.

**§ 102-117.375 Are there instances where a Transportation Officer warrant is not necessary to acquire transportation services?**

Yes, a Transportation Officer warrant is not necessary to:

(a) Ship packages through a contract under the GSA Schedules program, including any Blanket Purchase Agreement, as these are Federal Acquisition Regulation (FAR) based contracts;

(b) Ship packages or other materials through any other FAR-based contract; or

(c) Send items through the United States Postal Service.

**§ 102-117.380 What should be contained in a Transportation Officer warrant to acquire transportation services?**

The warrant issued by the agency head or his/her designee should:

(a) State that you have sufficient experience (any combination of Federal, public, or commercial) and/or training in transportation services that qualify you to acquire transportation;

(b) List the limitations on the scope of your authority, including the maximum dollar limit and any other limits such as the types of services that you may acquire;

(c) State the minimum requirements necessary to maintain the warrant; and

(d) Include an expiration date for the warrant, recommended not to exceed three years from the date of issuance.

**§ 102-117.385 Is there a standard format for a Transportation Officer warrant?**

No. GSA can provide your agency with a suggested format; agencies can model the transportation officer warrant after the contracting officer warrant; or agencies may establish their own format.

**§ 102-117.390 What training and/or experience is recommended for my agency to warrant me to acquire transportation services?**

(a) Your agency should establish training and/or experience requirements to qualify you for a Transportation Officer warrant. The following are suggested baseline training and/or experience requirements:

(1) For a Basic (Level 1) Transportation Officer Warrant:

(i) Twenty-four (24) hours of training in Federal civilian transportation; or

(ii) Two years of Federal, public, or commercial experience in acquiring transportation through rate tenders.

(2) For an Experienced (Level 2) Transportation Officer

Warrant:

(i) Thirty-two (32) hours of training in transportation, including 20 hours of training in Federal civilian transportation; or

(ii) Three years of Federal, public, or commercial experience in acquiring transportation through rate tenders.

(3) For a Senior (Level 3) Transportation Officer

Warrant:

(i) Sixty (60) hours of training in transportation, including 40 hours of training in Federal civilian transportation; or

(ii) Five years of Federal, public, or commercial experience in acquiring transportation through rate tenders.

(b) GSA created an online eLearning Transportation Officer training site hosted by the U.S. Office of Personnel Management. The training courses provide a standard Governmentwide body of transportation knowledge. This web-based eLearning site is available at <http://transportationofficer.golearnportal.org/> and is available to all Federal agencies.

**§ 102-117.395 Should I continue my training to maintain my warrant?**

Yes, you should continue your training. Your agency will determine the continuing education requirements that apply specifically to your warrant. It is recommended that at least 12 hours of transportation training per year be completed in order to maintain a Transportation Officer warrant.

**§ 102-117.400 How should my warrant be documented and maintained?**

The head of your agency or his/her designee should state, in writing, that you have the recommended training or experience suggested by § 102-117.390. You should retain a copy of this Transportation Officer warrant. Agency heads or their designees may amend, suspend, or terminate warrants in accordance with agency policies and/or procedures.

**§ 102-117.405 Are there dollar limits on transportation service acquisitions?**

Yes, a limitation on the dollar amount you may acquire using your transportation officer warrant should be established by your agency and should be stated in your warrant.

**§ 102-117.410 Is a Transportation Officer liable for his/her actions?**

For information regarding liabilities, see 41 CFR 102-118.350 through 102-118.370, as applicable, if the

Transportation Officer is also the certifying official and/or the disbursing official.

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